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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

APRIL W.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D060202

(San Diego County Super. Ct. No.
SJ11381A-C)

PROCEEDINGS in mandate to review temporary protective placement orders entered at a detention hearing, R.F. Frazier, Judge. Petition denied.

April W., mother of the minor children, challenges findings and orders made at a detention hearing under Welfare and Institutions Code¹ section 319.²

¹ Unless otherwise specified, further statutory references are to the Welfare and Institutions Code.

² On November 15, 2011, this court deemed April's opening brief a petition for writ of mandate. (See *In re Jennifer V.* (1998) 197 Cal.App.3d 1206, 1209 [detention and jurisdictional orders are not appealable orders under section 395].)

FACTUAL AND PROCEDURAL BACKGROUND

April W. is the mother of three children, Daniel D., age 8 years, Dylan D., age five years, and C.W., age two years. April's husband, Gary W., is the father of Dylan and C.W. Daniel's alleged father was not involved in Daniel's life.

In 2004, Daniel was adjudged a dependent of the juvenile court due to April's methamphetamine use and her practice of leaving him in the care of others for long periods of time. April completed a substance abuse treatment program and reunified with Daniel in 2005.

In June 2011, the San Diego County Health and Human Services Agency (Agency) received a referral alleging April and Gary were using methamphetamine, and had left the children for two weeks in the care of the children's maternal grandmother (Grandmother). Grandmother was disabled, living on a fixed income and renting one room in a home. The owner of the home, V.B., would not allow the children to reside in her home.

Grandmother believed that April and Gary were using methamphetamine. Grandmother had not observed any drug use by the parents but April's behaviors indicated she was using drugs. April started using methamphetamine 10 years earlier. Grandmother reported that Gary was a violent person who would do anything to hurt April. He slashed April's tires and refused to let her access her cellular telephone.

V.B. said Grandmother was unable to manage the children. They ran down the street unsupervised and climbed tall trees in the neighbors' yards.

Daniel and Dylan told the social worker they witnessed arguments between April and Gary, and Grandmother and V.B. Daniel said he slept on a dog bed.

April acknowledged she and Gary had histories of methamphetamine use. She denied current drug use but acknowledged she drank approximately two beers every night. April did not submit to a voluntary drug test. She told the social worker she would test positive for Vicodin. April was homeless and was living out of a truck. She did not want her children to be exposed to those conditions. April left the children with their grandmother knowing they were not permitted to stay there. April said Gary was threatening her and would not leave her alone.

Gary acknowledged his relationship with April was strained and they were going to divorce. He knew the children were not welcome at V.B.'s home. Gary said he witnessed April using methamphetamine and drinking vodka approximately two weeks earlier. She had a history of "disappearing" and leaving the children with Grandmother. Gary said Grandmother had mental health issues. On an earlier occasion he retrieved the children from Grandmother's care because she was paranoid and believed people wanted to harm her.

The social worker detained the children in protective custody and filed a petition under section 300, subdivision (b), on behalf of each child. The children were detained with a paternal aunt.

On July 5, 2011, the court continued the detention hearing for one day to allow Grandmother, who was in the hospital, to appear as a witness. On July 6, Grandmother

was present in court when the hearing began. April, through counsel, made a motion to dismiss the petitions (motion akin to a demurrer) on the grounds the petitions lacked specificity and the allegations were not sufficient to sustain findings under section 300, subdivision (b). The court overruled the demurrer.

The court admitted the social worker's reports in evidence. The social worker testified that on June 30, 2011, a San Diego County Deputy Sheriff informed her the children could not stay in V.B.'s home. The social worker spoke to Grandmother, who confirmed that the children could not stay with her. The social worker decided to detain the children in protective custody for several reasons, including April's history of leaving the children for long periods of time, her history of substance abuse, and reports she was currently abusing drugs. When the social worker met with April the previous day, April's eyes were glassy and she was agitated. The social worker believed April was under the influence. Further, Gary had a drug-related criminal history. The social worker was also concerned about possible domestic violence between the parents. Daniel and Dylan reported their parents fought, and April admitted that she and Gary argued constantly.

After the social worker testified, the court held a lunch recess. When the hearing resumed, April asked the court for a continuance to obtain retained counsel. She also informed the court Grandmother had left the courthouse because she was not feeling well. April asked the court to continue the hearing for a day to allow Grandmother to appear and testify. The court denied the request for a continuance.

April offered a letter from V.B. stating the children could remain in the home until August 1, 2011. The court sustained objections to the admission of the letter as hearsay and lacking authentication, and did not admit the letter in evidence.

The court determined there was a prima facie showing that the children were persons described by section 300, subdivision (b), and found that continued care in the home of a parent was contrary to the children's welfare. The court further found that the children were at substantial risk of danger to their physical or emotional well-being, and there were no reasonable means to protect the children without removing them from parental custody.

DISCUSSION

April argues the juvenile court erred when it assumed jurisdiction because the petitions under section 300, subdivision (b) were facially deficient. She contends the juvenile court abused its discretion when it denied her request for a continuance to secure the presence and testimony of Grandmother. April also asserts the court erred when it detained the children in protective custody instead of leaving the children in her care under a protective services plan.

A

The Petitions State a Basis for Jurisdiction Under Section 300, Subdivision (b)

In dependency proceedings, the parent of the child has a fundamental due process right to notice of " 'the specific factual allegations against him or her with sufficient particularity to permit him or her to properly meet the charge.' " (*In re Fred J.* (1979) 89

Cal.App.3d 168, 175, quoting *In re J.T.* (1974) 40 Cal.App.3d 633, 639, italics omitted.)

A dependency petition must contain a "concise statement of facts, separately stated, to support the conclusion that the child upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted." (§ 332, subd. (f).) If the parent believes that the allegations, as drafted, do not support a finding that the child is described by one or more of the subdivisions under section 300, the parent has the right to bring a motion "akin to a demurrer." (*In re S.O.* (2002) 103 Cal.App.4th 453, 460.)

When the facial sufficiency of a petition filed under section 300, subdivision (b) is challenged on review, we construe the well-pleaded facts in favor of the petition to determine whether the Agency pleaded that the parents did not supervise or protect the children within the meaning of section 300, subdivision (b).³ (*In re Janet T.* (2001) 93 Cal.App.4th 377, 386 (*Janet T.*); *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1133.) A facially sufficient petition "does not require the pleader to regurgitate the contents of the

³ Under section 300, subdivision (b), a child is subject to juvenile court jurisdiction if the "child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family."

social worker's report into a petition, it merely requires the pleading of essential facts establishing at least one ground of juvenile court jurisdiction." (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 399-400.)

Here, the social worker alleged:

"On or about and between June 15, 2011 to present said child was destitute in that the mother negligently and willfully failed and refused to provide said child with the necessities of life, including, but not limited to, the child was left with the maternal grandmother who cannot keep the child in the home where she resides and the mother knew that the child was not able to remain there and it was not a good environment for the child. The mother is homeless and did not make contact with the grandmother to arrange for proper care of the child. The mother has a history of leaving her child with the grandmother for long periods of time and said child is in need of the protection of the Juvenile Court."

April argues the petitions allege the children were described by section 300, subdivision (b), because they were poor, and do not describe neglectful conduct by the parents. We disagree. The children's petitions allege April knowingly left the children in the care of a person who could not provide for them, and did not make any arrangements or provisions for their care. The petitions further allege this was a pattern of behavior by April, not an isolated incident.

Contrary to April's assertions, the circumstances here are not similar to those in *In re V.M.* (2010) 191 Cal.App.4th 245 (*V.M.*). In that case, the father left the child in the care of her maternal grandparents after the child's mother died, and made arrangements to help support and visit his child. The grandparents were able to provide for the child. (*Id.* at pp. 248-250.) The reviewing court held that there was insufficient evidence to support

the jurisdictional finding the child was exposed to a substantial risk of serious harm or illness as a result of any act or omission by the parent. (*Id.* at p. 252.) Similarly, *In re X.S.* (2010) 190 Cal.App.4th 1154 (X.S.) does not assist April. In that case, the reviewing court held that the father's failure to provide for his then eight-month old child until he learned he was biological father did not cause the child to suffer, or create a risk the child would suffer, serious physical harm. (*Id.* at p. 1160.) The child was well cared for in the home of his grandmother, and it was the mother's actions that brought the child into the dependency system. (*Ibid.*) Here, in contrast, the petitions state a prima facie case that April left her children with a caregiver who was not able to care for them in her home, and did not make any arrangements for their support.

April also contends this case is similar to *Janet T.*, in which the reviewing court held that the sustained allegations of the petition were insufficient to establish juvenile court jurisdiction. (*Janet T., supra*, 93 Cal.App.4th at p. 392.) In that case, the petition stated the mother had mental and emotional problems and did not send her children to school, thus depriving them of an education and ongoing peer relationships. (*Id.* at p. 387.) The reviewing court stated no facts were alleged or suggested to indicate the lack of school attendance subjected the children to physical injury or illness. Further, the allegation of mental illness did not provide other facts to suggest how the mother's mental health problems created a substantial risk to the children. (*Id.* at pp. 388-389.)

Here, the statements of fact contained in the petitions allege the children were at

serious risk of physical harm or illness because they were left for an extended period of time by their mother in an untenable situation, without any provision for their support. The children no longer had a home or an adequate caregiver. The alleged facts suggest that the children, who were then ages seven, five and one years old, would be at serious risk of physical harm or injury if left without adequate support, day-to-day care, supervision, and protection.⁴ Thus the petitions provide the parents with notice of the specific factual allegations with sufficient particularity to allow them to understand and contest the allegations. (*In re Fred J.*, supra, 89 Cal.App.3d at p. 175.)

B

The Court Did Not Abuse Its Discretion When It Denied April's Second Motion for a Continuance

April contends the court abused its discretion when it denied her request on July 6, 2011 to continue the detention hearing for one day to secure Grandmother's presence and testimony. She contends the error is not harmless because Grandmother would have testified the children could stay with her in V.B.'s home until August 1, 2011, and would have authenticated V.B.'s letter granting permission for the children to stay in the home. April argues Grandmother's testimony would show that April had ample time to locate a place to stay for herself and the children, and the children's detention in protective custody was not necessary.

⁴ We note that at a detention hearing, the court is required only to determine there is a prima facie case the children come within section 300. (§ 319, subd. (a).) The facts alleged here also constitute grounds for jurisdiction under section 300, subdivision (g), which provides for juvenile court jurisdiction when the child has been left without any provision for support.

Under section 352, the juvenile court may grant a continuance of any hearing only on a showing of good cause and only if the continuance is not contrary to the child's best interests. In considering the child's best interests, the court must give substantial weight to the child's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements. (§ 352, subd. (a).) Continuances are discouraged in dependency cases. (*In re Elijah V.* (2005) 127 Cal.App.4th 576, 585.)

We review the denial of a continuance for abuse of discretion. (*In re Elijah V.*, *supra*, 127 Cal.App.4th at p. 585.) The reviewing court gives broad deference to the juvenile court's decision and should interfere only if it finds that under all the evidence, viewed most favorably in support of the ruling, no juvenile court could reasonably have made that ruling. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

On this record April does not show the juvenile court abused its discretion when it denied her second request to continue the detention hearing. The court had continued the hearing on July 5 to allow Grandmother to be present and testify. She left during the proceedings on July 6. By the time April asked for a continuance to secure Grandmother's presence, the court had admitted the Agency's reports in evidence and heard the testimony of the social worker. The Agency's reports included the social worker's interviews with Grandmother, which were not favorable to April.

April argues Grandmother's testimony would have shown that the children could stay in V.B.'s home until August 1, and therefore temporary removal from *April's custody*

was not required. April implicitly admits she was not able to care for the children at the time of the detention hearing. However, the issue before the court was not whether the children were able to stay with Grandmother. Instead, it was whether there were any reasonable means to protect the children's physical or emotional health without removing them from the custody of *their parents*. (§ 319, subd. (b)(1).) The court could reasonably determine that evidence showing Grandmother could care for the children until August 1 was not material to the issue whether the children should be removed from parental custody. As we discuss, *post*, the protective risks to the children encompassed more than April's lack of housing for herself and the children, and would not be resolved by leaving the children in Grandmother's temporary care.

Further, to the extent Grandmother was requesting temporary placement of the children to avoid their placement in foster care, the court could reasonably determine the children's placement with their paternal aunt met their immediate needs for a safe, stable placement in the preferred home of a relative. Thus April does not meet her burden to show that the court abused its discretion when it denied her second request for a continuance of the detention hearing.

C

The Court Did Not Err When It Detained the Children in Protective Custody

April contends there is insufficient evidence to support the finding the children would be in danger in her care. She asserts the children had not suffered any serious physical harm in her care and there was no present danger that would jeopardize their

safety. April contends the court did not consider alternatives to removal such as placing the children in her or Grandmother's care on condition they receive consistent psychological and in-home services.

Section 319, subdivision (b) governs the temporary removal of the child from his or her parent at the detention hearing. It directs the court to "order the release of the child from custody unless a prima facie showing has been made that the child comes within [s]ection 300, the court finds that continuance in the parent's or guardian's home is contrary to the child's welfare, and . . . [t]here is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the parent's or guardian's physical custody." (§ 319, subds. (b) & (b)(1).)

Physical injury to a child is not a prerequisite to removal under section 319, subdivision (b)(1). The Legislature presumes that the provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection, and physical and emotional well-being of the child. (§ 300.2.) Here, as set forth in the social worker's reports, the record shows that the risks to the children in their parent's care included inadequate supervision, parental substance abuse, volatility, chronic instability and homelessness. April exhibited signs of drug use at the initial hearing. Gary witnessed April using methamphetamine and drinking alcohol two weeks before the detention hearing. April had a pattern of "disappearing." The parents

acknowledged they had a contentious relationship, and there were reports that Gary engaged in threatening or controlling behaviors with April. There is substantial evidence to support the court's findings under section 319, subdivision (b)(1).

Further, the record supports the conclusion that placing the children with Grandmother would not adequately protect the children's physical or emotional health. There is substantial evidence to show that Grandmother did not have suitable housing for the children and could not manage their behaviors. Grandmother and V.B. had a contentious relationship and argued in front of the children. Daniel did not have a bed; he slept on a dog cushion. The children played in the street unsupervised. Grandmother had physical and mental health conditions, and had recently been hospitalized. She was not well enough to sit through a court hearing. While the record shows that Grandmother did her best for the children under difficult circumstances, it also supports the finding that the children's temporary placement with Grandmother was not a reasonable alternative to removal.

In view of the evidence of April's instability, homelessness and substance abuse, we conclude there is substantial evidence to support the court's findings there was a substantial danger to the children's physical health and there were no reasonable means to protect their physical and emotional health without removing the children from parental custody.

DISPOSITION

The petition is denied.

NARES, J.

WE CONCUR:

McCONNELL, P. J.

HUFFMAN, J.